AW KEW LIM & ORS.

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
CHAN SEK KEONG JC
[MAGISTRATE'S APPEAL NO. 239 OF 1984]
31 JULY 1987

COPYRIGHT: *Gramophone records - Cassette tapes on display - Suspected to be pirated copies of songs - Offence under s. 3(1) Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 64) - Whether Company having in possession for sale - Identity of partners of firm - Whether any evidence to connect appellants to cassette tapes - Question of "Possession" - Essential ingredient of offence "possession" to be proved - Whether any presumption that things in possession of one partner were in possession of all other partners - Knowledge of appellants that tapes were made in breach of copyright - Whether admissible evidence proved appellants were partners of firm at material time.*

EVIDENCE: *Computer printout from Registry of Businesses discloses particulars of firm - Information retrieved from data base - Whether it is "a copy of or an extract from any document filed with the Registrar" - Requirement of s. 16 of Business Registration Act - Conditions for admission of computer printout - Counsel did not object to admission of printout - Whether inadmissible evidence becomes admissible because of failure of Counsel to object to its admission.*

This was an appeal by the appellants against their convictions by the Subordinate Court for 19 offences under s. 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 64) for having in their possession for sale on or about 25 February 1983 a number of pirated copies of gramophone records of various songs which were protected by copyright in Singapore. The appellants were sentenced to a fine of $200 each for each charge or in default 10 days' imprisonment for each charge, and it was further ordered that all tapes seized be forfeited to the complainant for destruction.

Held:

[1] The computer printout was not a document contemplated by s. 16 of the Business Registration Act (cap. 32) as it contemplates "a copy of or an extract from any document filed with the Registrar". The computer being an Instant Information sheet which contained information retrieved from a data base was not a copy of or an extract from any document filed with the Registry.

[2] It is clear law that inadmissible evidence does not become admissible because of failure of Counsel to object to its admission. In any event where the prosecution has failed to prove a case which, if unrebutted, would warrant a conviction, the prosecution may not rely on Counsel's submission (which, strictly speaking, is merely his view on the evidence, may be wrong, as in this case) to provide the requisite additional evidence to prove its case.

[3] Section 396 of the Criminal Procedure Code (Cap. 68) had no application where the prosecution had not proved an essential ingredient of an offence.

[4] In the circumstances the Court found that there was no admissible evidence which proved that the appellants were at the material time the partners of the firm in whose premises the pirated tapes were seized and thus no link was established between the tapes and the appellants.

[Appeal allowed. Convictions quashed. Fines ordered to be refunded to appellants. Order of forfeiture and destruction of pirated tapes confirmed.]

Cases referred to:
Waterson's Trustees v. St. Giles Boys Club [1943] SC 369
Rex v. Tay Choon Huat [1947] 13 MLJ xxiii
Toh Ah Loh and Mak Thim v. Rex [1949] MLJ 54

Legislation referred to:
Business Registration Act (Cap. 32)[Sing], s. 16
Copyright (Gramophone Records and Government Broadcasting) Act [Sing], ss. 3(1), 5
Criminal Procedure Code [Sing], s. 396
Evidence Act (Cap 97) [Sing], s. 35

JUDGMENT

Chan Sek Keong JC:

This is an appeal by all six appellants who were jointly charged with and convicted by the Subordinate Court for 19 offences under s. 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (now Cap. 64) for having in their possession for sale on or about 25 February 1983 at No. 296 Lucky Plaza, 2nd Floor, Orchard Road, Singapore 0923, a number of pirated copies of gramophone records of various songs which included "Sheena Easton - 9 to 5", "Beatles - I Saw Her Standing There". They were sentenced to a fine of $200 each for each charge or in default 10 days imprisonment for each charge. The Court further ordered that all tapes seized be forfeited to the complainant for destruction.

The evidence adduced by the prosecution was as follows. On 25 February 1983, the police, armed with a search warrant, and in the company of representatives of the record company, entered and searched the shop premises of a firm known as Supreme Record Centre at Lucky Plaza. The party identified and picked out 793 cassette tapes on display which were suspected to be pirated copies of songs which were protected by copyright in Singapore. There were two salesgirls at the shop. One of them telephoned the owners to call at the shop but no one turned up.

At the trial, the various cassette tapes which formed the subject matter of the charges were proved to be pirated copies by affidavit evidence and admitted in accordance with s. 5 of the Act.

The prosecution also produced in evidence to prove the identities of the partners of Supreme Record Centre a document from the Registry of Companies with the title "Instant Information Service" (Exhibit P20). Counsel for the accused did not object to the admission in evidence of P20. This document was a computer printout obtained from the Registry of Companies and Businesses. It contained, *inter alia*, the following information: the name of the firm, its constitution (i.e. sole proprietorship or partnership), its principal place of business and branches, the date of registration, its activities, the names and addresses of the partners and the manager and their dates of entry to and withdrawal from such positions. At the end of this document is a statement as follows: "The above information is updated to seven days from the date shown below". The date shown below was 5 March 1984 and the document was initialled by an unidentified person "for Registrar of Companies & Businesses".

The above, in short, was the state of the evidence at the close of the prosecution's case. Counsel for the accused made a submission of no case to answer on various grounds which have been abandoned in this appeal. However, Counsel for the accused, in and for the

purpose of his submission "conceded that the accused had in their possession for sale the alleged pirated copies of gramophone records" (i.e. within the statutory definition of that term).

The district Judge called for the defence. The accused elected not to give evidence and they were accordingly convicted.

On appeal, Counsel for the appellants submitted that the conviction was wrong as there was insufficient evidence to support an essential ingredient of the offence, namely "possession" by the appellants. This submission contained two separate elements: (1) there was no evidence to connect the appellants to the cassette tapes and (2) "possession" in s. 3 of the Act required *mens rea*, of which there was no evidence in regard to the appellants.

On the first point, Counsel submitted that the computer printout from the Registry of Companies & Businesses was hearsay evidence and that evidence from such Registry, to be admissible, must comply with s. 16 of the Business Registration Act (Cap. 32) which reads as follows:

> (1) Any person may, upon payment of such fees as may be prescribed, require a copy of a certificate of registration issued to any person, or a copy of or an extract from any document filed with the Registrar, to be certified by the Registrar.
>
> (2) Any copy or extract given under subsection (1), if duly certified to be a true copy or extract under the hand of the Registrar, shall be received as *prima facie* evidence in any proceedings without proof being given that the certificate was signed by the Registrar.

It was submitted that the computer printout did not satisfy the requirement of s. 16 of Cap. 32 on three grounds (a) it was not duly certified to be a true copy; (b) although initialled by someone for the Registrar, it was not [certified] under the hand of the Registrar: see *Waterson's Trustees v. St Giles Boys Club* [1943] SC 369; (c) the computer printout was not a document contemplated by s. 16 of Cap. 32. I agreed with this submission on the said grounds. What s. 16 contemplates is a "copy of or an extract from any document filed with the Registrar'. The Instant Information Sheet contained information retrieved from a data base. The date base itself holds and is a record of all the relevant information abstracted from documents filed with the Registry. The computer printout was not a copy of or an extract from any document filed in the Registry. It was, as conceded by the DPP, an original document. It contained information retrieved from some kind of data base or a memory bank of a computer. But it was an original document containing evidence which was hearsay. Therefore, even if the Registrar had, in this case, purported to certify under his hand the Instant Information Sheet as a true copy of the documents filed in the Registry, it would not have complied with s. 16. Had he purported to certify the Instant Information Sheet to have been an extract, it would have been arguable whether the certification would be correct in point of fact as a document containing abstracted information might not be an extract for the purpose of the Act.

The DPP, in reply, submitted that Exhibit P20 was tendered under s. 35 of the Evidence Act (Cap. 97). This section provides for the admissibility in any proceedings of computer printouts as evidence of the facts stated therein of which direct oral evidence would be admissible if four conditions relating to the statement and the computer in question are satisfied. This submission had no merit as the prosecution had not adduced any evidence to satisfy any of the four conditions.

The DPP also contended that even if Exhibit P20 were wrongly admitted the prosecution had made out a case to answer on the grounds that the defence Counsel (1) had not objected to the admission of Exhibit P20 and had conducted his defence on the assumption that the accused persons were, at the material time, the partners of Supreme Record Centre and (2) had in his submission conceded that the accused were in possession of the pirated tapes.

I did not accept this submission. On the first point, it is clear law that inadmissible evidence does not become admissible because of the failure of Counsel to object to its admission. On the second ground, Counsel's concession was, submitted by Counsel for the appellants, made on the assumption (wrongly, as it turned out) that there was admissible evidence to prove that the accused persons were the partners of the firm. In any event, where the prosecution has failed to prove a case which, if unrebutted, would warrant a conviction, then, in my view, the prosecution may not rely on Counsel's submission (which, strictly speaking, is merely his view on the evidence, may be wrong, as in this case) to provide the requisite additional evidence to prove its case. As it turned out in this case, this piece of evidence i.e. the identities of the partners, was vital to the prosecution's case. Without it, an essential ingredient of each of the charges was not proved.

As her final submission, the DPP contended that any error in the admission in evidence of Exhibit P20 had not occasioned a failure of justice and that s. 396(c) of the Criminal Procedure Code (Cap. 68) applied to this case. Counsel for the appellants contended otherwise and referred to *Rex. v. Tay Choon Huat* (Magistrates Appeal No. 89 of 1947) [1947] 13 MLJ xxiii where Murray-Ansley CJ held that the improper admission of a chemist's certificate resulting in the conviction of the accused for strong dutiable liquor on his licensed premises could not be said not to have occasioned a failure of justice.

In my view, s. 396 had no application where the prosecution had not proved an essential ingredient of an offence. This was not a case where the improper admission of Exhibit P20 had occasioned a failure of justice in the sense contemplated by s. 396. This was a case where, if Exhibit P20 had not been admitted, the prosecution had not crossed the threshold of proving a *prima facie* case for the accused to answer.

In regard to the concept of possession, Counsel for the appellants submitted that even if Exhibit P20 had been properly admitted, it was not, by itself, evidence that each and every one of the accused was in possession of the pirated tapes. It was contended that possession in s. 3 of Cap. 64 had to be proved against each partner and that there was no presumption that things in the possession of one partner was, in law, in the possession of all other partners. Here, of course, no partner was in the shop premises when the pirated tapes were seized. It was further submitted on the authority of *Toh Ah Loh and Mak Thim v. Rex* [1949] MLJ 54 that "possession" in order to incriminate a person, must have the following characteristics:

(a) the person must know the nature of the thing possessed;

(b) he must have in him a power of disposal over the thing; and

(c) he must be conscious of his possession of the thing.

and that, in the present case, no evidence had been adduced to show that the accused persons had known that the tapes were made in breach of copyright.

I found it unnecessary to decide on these two submissions, although I was not inclined to agree to the second submission that *mens rea* was necessary to prove an offence under s. 3(1) of Cap 64. As to the first submission, whether or not all the partners, or some of

them or the managing partner or the manager might be presumed to be in possession of pirated tapes seized in circumstances as here was an issue which would have to be decided at some other time in some other case.

In the circumstances, I found that there was no admissible evidence which proved that the appellants were at the material time the partners of the firm in whose premises the pirated tapes were seized and thus no link was established between the tapes and the appellants.

Accordingly, I allowed the appeal, quashed the conviction and ordered that the fines be refunded to the appellants. The order for the forfeiture and destruction of the pirated tapes was confirmed.

Also found at [1988] 1 CLJ 584